



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32825647

Date: AUG. 16, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a small business entrepreneur, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that he meets the initial evidence requirements for this classification, either through his receipt of a major internationally recognized award, or, in the alternative, by submitting evidence that satisfies at least three of the ten regulatory criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter United States to continue working in the area of extraordinary ability; and
- Their entry into the United States has substantial prospective benefits for the country.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a two-part analysis. First, a petitioner can demonstrate a one-time

achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also; Amin v. Mayorkas*, 24 F.4th 383, 391-392 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013).

II. ANALYSIS

The Petitioner, who was last admitted to the United States in E-2 nonimmigrant status as a treaty investor, is the co-owner and operator of a [REDACTED] Colorado-based coffee shop and café business he acquired in 2012. The Petitioner indicates he intends to continue operating this business if granted lawful permanent residence in the United States. He claims eligibility for this classification as a small business owner and entrepreneur with extraordinary ability in business.

A. Evidentiary Criteria

The Petitioner does not claim to qualify for extraordinary ability classification based on a one-time achievement. Accordingly, he must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Here, the Director acknowledge that the Petitioner submitted evidence relating to five of the ten criteria, but concluded that he did not demonstrate that he meets any of them. The Petitioner claimed to meet the criteria summarized below:

- Receipt of lesser nationally or internationally recognized awards or prizes for excellence, under 8 C.F.R. § 204.5(h)(3)(i);
- Published materials about him in major media, relating to his work in the field, under 8 C.F.R. § 204.5(h)(3)(iii);
- Judging the work of others in the same or allied field, under 8 C.F.R. § 204.5(h)(3)(iv);
- Original business-related contributions of major significance in the field, under 8 C.F.R. § 204.5(h)(3)(v); and
- Performance in a leading or critical role for organizations or establishments that have a distinguished reputation; under 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner maintains that he submitted “evidence supporting more than three categories” and contends that the Director improperly discounted “virtually every single piece of evidence provided.” He specifically emphasizes his submission of more than 50 letters of support and asserts that the Director’s decision was “both discriminatory and prejudicial in nature.” However, the Petitioner does not address the Director’s specific findings with respect to each of the five claimed criteria.

For the reasons provided below, we conclude the Petitioner has not demonstrated that he satisfies the requirements of at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

1. Receipt of lesser nationally or internationally recognized awards or prizes for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

In evaluating this criterion, we must first determine whether the person was the recipient of an award or prize. Second, we determine whether the award is a lesser nationally or internationally recognized prize or award which the person received for excellence in the field of endeavor. *See generally 6 USCIS Policy Manual F.2(B)(1)*, <https://www.uscis.gov/policy-manual> (discussing evaluation of initial evidence extraordinary ability under 8 C.F.R. § 204.5(h)(3)(i)-(x)). Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field may include: the criteria used to grant the awards or prizes; the national or international significance of the awards or prizes in the field; the number of awardees or prize recipients; and limitations on competitors. *Id.*

The Petitioner claimed eligibility under this criterion based on the following awards:

- Café of the Year, [redacted] Awards 2023;
- [redacted] Award 2023;
- Best Family-Owned Community Coffee Shop 2023 – Colorado, [redacted] Awards;
- Best Local Coffee Shop 2023 – [redacted] County, [redacted] and
- A “financial gift” awarded by [redacted]¹

We agree with the Director’s determination that the Petitioner did not meet his burden to demonstrate that he has been the recipient of national or internationally recognized awards or prizes for excellence in his field of endeavor.

With respect to the [redacted] Award, the Petitioner submitted a copy of an email from a representative of the awarding entity to his business, advising that the business had been selected as the winner in the “Café of the Year” category. The email states that winners would be featured in the [redacted] which would be distributed to “businesses and professionals around the world” but the Petitioner did not provide a copy of this guide listing his business as a recipient. The Petitioner also submitted an excerpt from the [redacted] website which provides some information regarding the nomination process and indicates that this entity has several different awards programs including [redacted] Awards” and [redacted] Awards” in addition to the [redacted] Awards.”

In a request for evidence (RFE), the Director advised the Petitioner that the email notification provided insufficient evidence of his company’s receipt of the award, and further informed him that the limited

¹ The record also contains evidence that the Petitioner’s business received [redacted] awards for Best Atmosphere in [redacted] and Best Café in [redacted] in 2023, as well as [redacted] Awards for the years 2020-2023. In addition, the Petitioner received an [redacted] of the Year award in 2018. The Petitioner did not pursue his initial claim that these are qualifying awards when responding to the Director’s request for evidence and has not addressed these awards on appeal. Accordingly, we will not discuss them further in evaluating whether he meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

information provided from the awarding entity's website did not demonstrate that the award is a nationally or internationally recognized award for excellence in the Petitioner's field. In response, the Petitioner stated that "further confirmation" related to the [REDACTED] award could not be provided but emphasized that the initial evidence was sufficient to demonstrate that the award satisfies all elements of this evidentiary criterion.

We agree with the Director's determination that the Petitioner did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i) based on the [REDACTED] award. First, as noted, the Petitioner did not provide the published list of 2023 [REDACTED] Award Winners to corroborate the submitted email notification regarding its receipt of the award. Further, it is necessary to consider the level of recognition the award holds to determine whether it is "nationally or internationally recognized," consistent with the requirements of the criterion. [REDACTED] according to its website, appears to be a print and digital magazine with an unknown number of subscribers and readers. While its various awards programs appear to accept nominations from anywhere in the world, the limited information submitted from the awarding entity's website does not demonstrate that a "Best Café Award" from this entity is a "nationally or internationally recognized" prize or award for excellence in the Petitioner's field. The record does not contain evidence demonstrating the level of recognition associated with this award, such as, for example, evidence that the award garners any type of media coverage, or other evidence that the award is recognized in the field at the level required by the plain language of the regulation.

Regarding the 2023 [REDACTED] Award, the Petitioner provided a photograph of the trophy awarded to his business. The Petitioner also submitted a screenshot from the [REDACTED] Award website which provides a very brief explanation of the awards process, noting that it uses "advanced AI technology to help find the best food spots in America" and relies on a "panel of judges" who "determine if a restaurant is the best in its class." We agree with the Director's determination that this limited information falls short of establishing that this award is a nationally or internationally recognized award for excellence in the Petitioner's field, as the supporting evidence does not sufficiently demonstrate the criteria used to grant the award, its national or international significance in the field, the level of recognition association with it, or the number of awardees or prize recipients.

We have also considered the Petitioner's claim that the [REDACTED] Award qualifies as an internationally recognized award. The Petitioner provided information about the awards program from the [REDACTED] website, which states that "businesses around the world are welcome to participate and achieve well-deserved recognition." The evidence indicates that self-nominations are accepted and that all who accept a nomination are shortlisted and evaluated by an "internal panel." All award announcements are made digitally, and the winners can select "the level of coverage that suits them," apparently referring to options to purchase additional promotional packages.

The [REDACTED] website indicates that "its main coverage takes the form of a digital winners' magazine." The record does not establish that the Petitioner was included in this magazine or that it received any recognition beyond having its name listed among winners on the awards section of the magazine's website. As with the [REDACTED] award discussed above, the evidence does not demonstrate that a [REDACTED] Award or [REDACTED] Award is a nationally or internationally recognized award, as it does not contain sufficient evidence of the level of recognition

associated with the award. [] according to a submitted “media pack” is free digital lifestyle magazine, based in the United Kingdom, which is distributed bi-monthly to its subscribers in various countries. The evidence does not establish, for example, that it is a major media publication or contain other independent evidence to support the Petitioner’s claim that its restaurant and hospitality awards programs have reached the level of national or international recognition.

In his response to the RFE, the Petitioner asserted that the Director attempted to undermine the significance of this award by observing that [] had bestowed this award on many restaurant and bar establishments in 2023. He noted that there are over 700,000 food and drinking establishments in the United States alone, and that [] awarded only 1,445 awards to restaurants located worldwide. Based on these facts, the Petitioner asserted that the awards were issued to fewer than 0.2% of all possible candidates, and receipt of this award “would denote an individual being in the small percentage of restaurants at the very top of the field.” The Petitioner’s claim appears to be based on the proposition that every restaurant in the world was nominated and considered for receipt of this award, a premise that is not supported by the information in the record.

While the Petitioner emphasized that [] awards program accepts nominations internationally, we note the Petitioner was named Best Family-Owned Community Coffee Shop in Colorado and Best Local Coffee Shop in [] Colorado. We do not consider the geographic descriptors associated with these awards to be immaterial, as limitations on competitors may be a relevant factor in evaluating this criterion. The record does not contain information regarding these specific award categories, the number of nominees in each category, or how geographic location impacts the categories and the selection of award winners. Based on the evidence submitted and the awards bestowed, we cannot conclude that the Petitioner’s business competed against a national or international pool of nominees in the same restaurant category. Regardless, as noted, the record does not contain evidence that the [] awards are nationally or internationally recognized awards for excellence in the Petitioner’s field.

Finally, we note that in response to the RFE, the Petitioner submitted a letter from [] Director of []. He states that his organization, described as “a Christian 501c3” offered 10 financial gifts to business owners participating in their ministry and received 923 applications. He states that the Petitioner and his spouse applied and were “accepted . . . based on the criteria of [their] Christian faith and business ownership.” The Petitioner asserted that “[t]his grant put [the Petitioner] . . . in the top percentage within his field.” While it appears there was significant competition for this monetary award, the letter from Mr. [] is insufficient to establish that this financial gift or grant is a nationally or internationally recognized award or prize for excellence in the Petitioner’s field.

For the reasons discussed, we agree with the Director’s conclusion that the Petitioner did not meet his evidentiary burden to establish that he has received nationally or internationally recognized awards or prizes for excellence in his field of endeavor.

2. Published material about the individual in professional or major trade publications or other major media, relating to the individual’s work in the field for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submitted copies of five articles that were published online or in print by newspapers and magazines, including articles in *World* magazine (www.wng.org), [redacted] (www.[redacted].com), [redacted] (www.[redacted].com), [redacted] and [redacted]. The Petitioner also indicated that he was interviewed by FOX [redacted] news in [redacted] Colorado, on [redacted] 2023, but noted that there was no archived recording of the televised interview. He provided an undated Instagram post from the verified account of a FOX [redacted] news weatherman who mentioned meeting the Petitioner at his business, as well as a [redacted] 2017, article posted to the FOX [redacted] website which mentions that the Petitioner's business would be hosting a [redacted] event on [redacted] 2017. Finally, he provided information regarding *World* magazine, [redacted] from these entities' websites.

In the RFE, the Director discussed this evidence and advised the Petitioner that he did not meet his burden to demonstrate that the articles were published in professional or major trade publications or other major media. In response, the Petitioner claimed that *World* magazine and [redacted] a [redacted] newspaper, qualify as major media based on their circulation data, which was included with his submission. He further stated that although no circulation data was available for [redacted] it qualifies as major media because it targets the [redacted] metropolitan area, which is "home to millions of individuals." He did not pursue his initial claim that he satisfies this criterion based on the articles published in [redacted] or [redacted].

The Director determined that the Petitioner did not provide sufficient evidence to support his claim that the submitted articles were published in major media. In evaluating whether a submitted publication qualifies as major media, relevant factors include the relative circulation, readership or viewership of the source that published it. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1), <https://www.uscis.gov/policy-manual>).

We agree with the Director's conclusion that the Petitioner did not meet his evidentiary burden to establish the submitted articles were published in major media; he has not claimed that any of the articles appeared in professional or major trade publications. Further, he has not specifically addressed this criterion on appeal, other than noting that the Director should have given more weight to the above-referenced Instagram post from a verified account.

While the Petitioner provided circulation information for *World* magazine and [redacted] he did not provide *relative* circulation data or rankings showing that these publications enjoy a circulation, readership or viewership that places them among "major media" publications. The circulation numbers alone, without context or comparative data, are insufficient. Further, the fact that [redacted] targets a major metropolitan area is not sufficient to demonstrate that this magazine, for which no circulation data was provided, qualifies as major media. Finally, while the record contains some support for the Petitioner's claim that he was interviewed on a local television news station in [redacted] the record does not include a transcription of the interview, evidence of the date on which it was aired, or evidence that this local television station qualifies as major media.

For the reasons discussed, the Petitioner has not demonstrated that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

3. Participation, either individually or on a panel, as a judge of the work of others in the same or allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner initially claimed eligibility under this criterion based on his “invitation to volunteer as a judge and mentor of other small businesses” with [REDACTED] which is described as “an organization dedicated to providing training, coaching, and support to small businesses.” A letter from a representative of [REDACTED] states that the Petitioner leads a “weekly small group for business training,” and identifies six participants in these small group sessions. The letter states that the Petitioner provides “invaluable mentorship and guidance to local entrepreneurs.”

In the RFE, the Director informed the Petitioner that the letter from [REDACTED] did not sufficiently document his activities as a judge or his claimed work with the participants named in the letter. In response, the Petitioner submitted letters from two business owners named in the initial letter from [REDACTED]. One letter is addressed to the Petitioner, references the [REDACTED] meetings, and thanks him for offering “excellent information concerning the operations, marketing, strategizing, HR, etc. of running a successful business.” The other participant’s letter states that he attended a [REDACTED] class led by the Petitioner. The author indicates he learned “valuable aspects of entrepreneurship” and “benefited greatly from the wisdom shared by a seasoned veteran in the business world.”

The Petitioner also submitted letters from five current and former employees of his café business. These letters uniformly praise his leadership, integrity, dedication to customer service, the professional and personal mentorship he provides to employees, and the “learning environment” he creates in his shop, with several employees elaborating on the specific business-related skills he taught them during their tenure with the business.

The Director acknowledged the content of the letters, and the authors’ relationship with the Petitioner, but concluded that the evidence did not establish that his training activities with [REDACTED] or as a business owner satisfied the plain language of the criterion at 8 C.F.R. 204.5(h)(3)(iv). The Petitioner does not directly address this criterion on appeal, other than generally claiming that most evidence submitted in support of the petition was erroneously deemed insufficient. We agree with the Director’s determination.

While the Petitioner indicated that his work with [REDACTED] involved serving, in part, as a “judge” of other small businesses, the evidence does not support this statement. Rather the evidence indicates that his volunteer role with that company was to offer small group training sessions to several small business owners, during which he shared his knowledge and experience and provided guidance. The letters from [REDACTED] and the participants in the training sessions do not demonstrate that his role involved “judging the work of others.” Further, the letters from the Petitioner’s own current and former employees merely corroborate his provision of standard on-the-job training and guidance to ensure that his staff successfully performed their duties; they do not document his participation as a judge of other entrepreneurs in his field of specialization or in an allied field.

Therefore, for the reasons discussed, the Petitioner has not satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

B. Summary and Reserved Issues

The record does not establish that the Petitioner meets any of the three evidentiary criteria discussed above. Because the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), detailed discussion of the remaining two claimed criteria at 8 C.F.R. § 204.5(h)(3)(v) and (viii) cannot change the outcome of the appeal. Therefore, we reserve and will not address these remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576-77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). The record indicates that the Petitioner is a successful entrepreneur and small business owner who makes valuable contributions to his local community. He has earned the respect and admiration of that community, as well as a reputation for offering high-quality products and services. However, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered sustained national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.